

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 7723	DATE	2/1/2002
CASE TITLE	Carolyn Kopecky vs. UNUM Life Insurance Co. etc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Enter Memorandum Opinion and Order. Defendant now moves to dismiss count II and plaintiff's claim for future disability benefits. That motion is granted. Status hearing set for February 6, 2002 at 9:15am. to stand.

(11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.		U.S. DISTRICT COURT CLERK 02 FEB-4 PM 2:23 FILED-03-03-10 Date/time received in central Clerk's Office	2 number of notices FEB 05 2002 date docketed UN docketing deputy initials FEB 05 2002 date mailed notice UN mailing deputy initials	Document Number
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DOCKETED
FEB 05 2002

MEMORANDUM OPINION AND ORDER

This case began in state court as a state law suit on an insurance policy. It was, however, in reality an ERISA claim, and, after removal, plaintiff recast it as an ERISA claim. One state law vestige remains: a count II claim for attorneys' fees pursuant to 215 ILCS 5/155, for vexatious and unreasonable failure to pay disability benefits. Plaintiff also seeks past due benefits and a declaration that she is entitled to benefits for the rest of her life. Defendant now moves to dismiss count II and plaintiff's claim for future disability benefits. That motion is granted.

Plaintiff concedes that 215 ILCS 5/155 is normally preempted, Gawrysh v. CNA Insurance Companies, 978 F.Supp. 790 (N.D.Ill. 1997), but she argues that it applies here because the policy refers to Illinois as the governing jurisdiction, and states that it "is delivered in and governed by the laws of the governing jurisdiction." If this was not a policy issued as part of an ERISA plan, clearly it would be interpreted pursuant to Illinois, as contrasted to, say, Indiana, law. But it is an ERISA plan, which was the basis for removal. If Illinois law controlled, the case should have remained in state court. Plaintiff may ultimately be entitled to attorneys' fees, but as a matter of ERISA, not Illinois, law.

Plaintiff also concedes that we cannot enter a judgment for future benefits, but hopes to evade that conclusion by characterizing the relief sought as only a declaration of entitlement. She cites no authority. A declaration is but a slight removed from a judgment for damages. If plaintiff prevails, the result may make recovery of future benefits uncontested or much easier to attain. But we cannot conclusively predict the future.

James B. Moran

JAMES B. MORAN
Senior Judge, U. S. District Court

Feb. 1, 2002.